

## MEMORANDUM OF LAW

DATE: April 1, 1994

TO: Larry Gardner, Labor Relations Manager

FROM: City Attorney

SUBJECT: Long Term Disability of Mary Dow

Pursuant to your request, I have reviewed the Long Term Disability ("LTD") status of Mary Dow. Specifically, Ms. Dow has indicated that she was inappropriately denied an extension of LTD benefits so she could participate in the City's vocational rehabilitation program. Ms. Dow contends that she was willing and able to participate in the City's vocational rehabilitation program and inadvertence on the part of the City's program administrators prevented her participation in the program.

I would first refer you to the Memorandum of Law by Assistant City Attorney John M. Kaheny dated March 7, 1988, attached as Exhibit A, which indicates that the extension of LTD during the period of vocational rehabilitation is discretionary and contingent upon certain conditions. (Emphasis added.)

Those conditions include, but are not limited to:

(B) The objectives for rehabilitation and/or vocational retraining are:

1. Specifically defined and within realistic goals;
2. Subject to established time parameters for completion;
3. Approved by both the Vocational Rehabilitation and Long-Term Disability Income Plan Administrators; and
4. Commenced prior to the expiration of Long-Term Disability Benefits.

In an attempt to meet the above qualifications for vocational rehabilitation, Ms. Dow had one initial vocational rehabilitation interview on November 25, 1991. At that interview, Ms. Dow indicated that she was not currently

physically able to participate in the vocational rehabilitation program. Pursuant to her request, she was given a deferment of the commencement of her vocational rehabilitation until January 15, 1992. A letter was sent to her confirming the commencement date. On February 3, 1992, Risk Management received the return notice from Ms. Dow that she was ready to participate in vocational rehabilitation. Exhibit B. However, at that time, Ms. Dow was Temporarily Totally Disabled ("TTD"). She remained on TTD from February 3, 1992, through May 7, 1992. An employee is not eligible for vocational rehabilitation while he or she is temporarily totally disabled. The fact that one is totally disabled renders one unable to participate in the rehabilitation process. Ms. Dow's TTD and LTD ran concurrently and both expired on the May 7, 1992 date. At the time Ms. Dow's LTD benefits expired her ability to extend her LTD during the vocational rehabilitation period also expired.

Despite the fact that Ms. Dow's LTD benefits expired, her access to vocational rehabilitation benefits did not expire. Consequently, on July 24, 1992, she again applied for vocational rehabilitation benefits. A call was made to her representative seeking approval to proceed with the vocational rehabilitation process and for approval of a vocational rehabilitation vendor. No response from Ms. Dow's representative was received by the Risk Management Department.

The LTD plan provides that the discretionary extension of LTD benefits may be granted if vocational rehabilitation is begun prior to the expiration of LTD benefits. Additionally, Ms. Dow indicated at a meeting with her representative, Dean Rollins, and Nancy Stadille from the vocational rehabilitation program, that she was still unwilling to participate in the vocational rehabilitation program as recently as October 13, 1993. Based upon Ms. Dow's unwillingness to actually participate in the vocational rehabilitation program, the denial of the extension of LTD is within the discretion of the Risk Management Department.

If you have any further questions, please give me a call.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:341.1(x043.2)

Attachments

cc D. Cruz Gonzalez

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